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Before the  
Federal Communications Commission  
Washington, D.C. 20554

AUG 25 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

|  |   |                        |
|--|---|------------------------|
| In the Matter of                           | ) |                        |
|  | ) |                        |
| Amendment of Part 90 of the Commission's   | ) | PR Docket No. 93-144 ✓ |
| Rules to Facilitate Future Development of  | ) | RM-8117, RM-8030       |
| SMR Systems in the 800 MHz Frequency Band  | ) | RM-8029                |
|  | ) |                        |
| Implementation of Sections 3(n) and 322 of | ) | GN Docket No. 93-252   |
| the Communications Act – Regulatory        | ) |                        |
| Treatment of Mobile Services               | ) |                        |
|  | ) |                        |
| Implementation of Section 309(j) of the    | ) | PP Docket No. 93-253   |
| Communications Act – Competitive Bidding   | ) |                        |

To: The Commission

**PETITION FOR CLARIFICATION**

The City of Los Angeles Police Department ("LAPD"), by its attorneys, hereby requests that the Commission clarify Section 90.693 of its rules as recently adopted in the Second Report and Order in the above-captioned proceeding, FCC 97-223, released July 10, 1997.

In the Second Report and Order, the Commission decided "not (to) adopt mandatory relocation procedures for either SMR or non-SMR incumbents on the lower 230 channels." Second Report and Order at ¶ 52. Rather, in permitting "Incumbent Operations" to continue, the Commission provides for limited expansion and flexibility rights for lower channel incumbents. Second Report and Order at ¶¶ 53-69. There is no indication therein that non-SMR incumbents are to be treated any differently in any way than SMR incumbents on the channels.

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However, the applicable rule adopted in the Second Report and Order does not clearly reflect this plan and, indeed, can be read on its face to apply only to SMR licensees.

Section 90.693 provides as follows:

90.693 Grandfathering provisions for incumbent licensees.

(a) *General Provisions.* These provisions apply to “incumbent licensees”, all 800 SMR licensees who obtained licenses or filed applications on or before December 15, 1995.

Second Report and Order, Joint Appendix B. Subsections (b) and (d) of the revised Section 90.693 set forth specific conditions under which “grandfathered” licensees can modify their systems.

This is an obvious mistake which should be clarified. Specifically, Section 90.693(a) should be corrected to state clearly that both SMR and non-SMR licensees who obtained licenses or filed applications on or before December 15, 1995, are considered “incumbent licensees.” This is particularly important to ensure that public safety licensees in the General Category are protected, including those that obtained their licenses after December 15, 1995, but had submitted their applications prior to that date.

Previously, in the First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995) (“First Report and Order”), the Commission adopted a revised Section 90.615(b), regarding the frequencies in “Spectrum Block D” which were formerly referred to as General Category:

(b) Non-SMR stations that were authorized to transmit on these frequencies prior to March 18, 1996, and have remained so authorized continuously since that time may continue to operate in accordance with their current authorizations. Such authorizations may be renewed unchanged or with minor modifications as described in §90.693 of this subpart.

However, Section 90.693, as adopted in the First Report and Order, appears to apply only to “[g]randfathering provision for incumbent licensees in spectrum blocks A, B, and C” and the text refers only to “800 MHz SMR licensees.” There is no mention of Spectrum Block D or non-SMR licensees. To add to the confusion, and in apparent contradiction with Section 90.615(b), the Commission in the “Second Further Notice of Proposed Rule Making” portion of the First Report and Order, sought comment as to

how non-SMR licensees operation on the lower 80 and General Category channels should be treated. Should these licensees be relocated to non-SMR channels, and if so, under what circumstances and pursuant to what type of relocation?

Several parties, including LAPD, filed comments in response to this inquiry urging that non-SMR incumbents in the former General Category, especially public safety licensees, must not be required to relocate.

What is still not clear is whether the provisions of Section 90.693 apply to non-SMR licensees that obtained licenses or filed applications on or before December 15, 1995. Section 90.615 and the text of the Second Report and Order suggest a clear intent by the Commission that non-SMRs with applications filed prior to December 15, 1995, are entitled to at least the same rights as SMR incumbents. The rules, however, are less clear and could lead to confusion in the future.

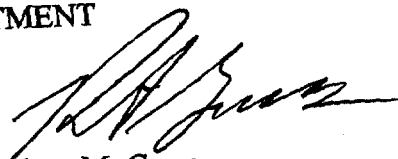
## CONCLUSION

Therefore, for the reasons discussed above, LAPD requests that the Commission clarify its rules to ensure that non-SMRs in the former General Category channels that filed applications prior to December 15, 1995, are not required to relocate and are subject to the provisions of Section 90.693.

Respectfully submitted,

CITY OF LOS ANGELES POLICE  
DEPARTMENT

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